

No. 9(1)32-6Lab./11830.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Chika Cooperative Marketing-cum-Processing Society Limited, Chika (Guhla) (Kurukshetra).

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 188/1981

between

SHRI SURESH KUMAR WORKMAN AND THE MANAGEMENT OF M/S. CHIKA
COOPERATIVE MARKETING-CUM-PROCESSING SOCIETY LIMITED, CHIKA (GUHLA)
(KURUKSHETRA.)

Present.—

Shri Rajeshwar Nath, for the workman.

Shri Phool Kumar, for the management.

AWARD

The Government of Haryana referred the following dispute between the workman Shri Suresh Kumar and the management of M/s Chika Cooperative Marketing-cum-Processing Society Limited Chika (Guhla) (Kurukshetra), by order No. ID/AMB/68/81/29552, dated 12th June, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Suresh Kumar was justified and in order ? If so, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared, and the filed their pleadings. On the pleadings of the parties, issue under reference was put under trial by order dated 17th September, 1981 and the case was fixed for the evidence of the management who examined Shri Chandi Ram Manager as MW-1 and the concerned workman examined himself as his own witness. MW-1 deposed that the workman was salesman. There were allegations of mis-appropriation and absence against the workman. He was issued charge-sheet Ex.M-1. Reply of the workman was Ex. M-2. The comments of the management were Ex. M-3. The workman was placed under suspension,—vide Ex. M-4 and order conveyed to him,—vide Ex. M-5. He was given show cause notice Ex. M-8 and M-7. The service of the workman was terminated,—vide Ex. M-8. He further deposed that the workman had deposited misappropriated amount of Rs 14357-20, cost of cattle feed and cost of paddy seed and B.H.C. In cross examination, he admitted that the workman had 4-5-years service. He also admitted that no domestic enquiry was held against him nor any enquiry officer was appointed. He also admitted that amount given in the examination chief was for the period prior to issue of charge-sheet. He admitted that the termination of the service was on account of mis-conduct. Absence was also referred in the charge-sheet.

The concerned workman deposed that he was appointed salesman on 24th May, 75. His service was terminated on 22nd March, 1980; He was not paid any notice pay or retrenchment compensation. No domestic enquiry was held against him. He had recieved charge-sheet which he replied. The allegation levelled in the charge-sheet were incorrect. In cross examination, he admitted having received memorandum which was replied,—vide Ex. M-2. He denied the suggestion that his work was not satisfactory.

The learned representative for the management submitted in argument that there was many allegations against the workman. There were serious charges of embezzlement against him. The workman failed to show his innocence although written opportunities were given to him. On the other hand learned representative for the workman contended that services of the workman was terminated on the account of mis-conduct but no proper domestic enquiry was held against him. He also contended that the management failed to offer opportunities of proceeding evidence to prove the charges against the workman, during the present proceeding. He also referred to arbitration,—vide, Ex. M-1 in which the workman was exonerated.

I have considered the argument of the parties and find that the service of the workman was terminated on account of misconduct as alleged by MW-1. It was also admitted fact that charge-sheet was issued to him and the workman denied allegation levelled against him. The management

failed to constitute any domestic enquiry against the workman. I find from Ex. M-1 which was dated 4th March, 1982 that there was nothing against the workman about the demand of Rs 39290/37. In this case, the management has failed to bring on guilt to the workman. It has neither held any domestic enquiry nor proved the case during these proceedings. This is a case of blatant defiance of principles of natural justice by the employer. Therefore termination order was unjustified and bad in-law. The workman was entitled to re-instatement with full back wages and continuity of service.

Dated the 2nd September, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Eadst. No. 1168, dated 11th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6 Lab/11940.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s M/s New India Dying and Finishing Mills, Pvt. Ltd., Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 294 of 1981

between

SHRI MUBARAK, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
NEW INDIA DYING AND FINISHING MILLS, PVT. LTD., FARIDABAD

Present.—

Shri R. N. Ral, for the workman.

Shri G. S. Chaudhary, for the respondent.

AWARD

This reference No. 294 of 1982 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/205/81/56361, dated 17th November, 1981 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mubarak, workman and the respondent-management of M/s New India Dying and Finishing Mills, Pvt. Ltd., Faridabad. The term of the reference was :—

Whether the termination of services of Shri Mubarak was justified and in order. If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference orders. The parties appeared and filled their pleadings. The case of the workman according to demand notice and claim statement is that the workman joined the services on 1st April, 75 and Folder Man and worked upto 13th August, 81 and he was removed from service on 13th August, 81 by Shri Kishan Narain. He was drawing Rs 306 as his salary. The workman applied for leave on 12th July, 80 to 12th August, 80 which was granted. When he returned from leave and reported for duty on 13th August, 81 and worked for two hours on that date after that he was removed from service saying that his service were not required any more. The present termination of services is retrenchment and the respondent has not complied the mandatory provisions of Section 25-F of the Industrial Disputes Act and the present termination is illegal and unjustified. The workman served a demand notice on 13th August, 81 but the respondent gave no reply. The workman is entitled for his reinstatement with continuity of service and back wages.

The case of the respondent according to is false and frivolous and only to extract money from the respondent. The respondent-management has not terminated the services of the workman, so the reference is bad in law and the workman is not entitled for any relief. The workman during the said period joined some other concerned M/s Export India Paras Cinema, Building, New Place, New Delhi as checker. The said company wrote a letter to the respondent that the workman is their employee as checker and authorised to check the goods by virtue of the said letter. The workman voluntarily left the services of his own accord and the respondent did not terminated the services of the workman. He joined the services on a higher salary. So the question of removal by any person does not arise. The workman gave no leave application to the respondent and it is false case and it may be dismissed.

On the pleadings of the parties, following issues were framed :—

1. Whether the workman has abandoned the services of his own ? If so, to what effect ?
2. As per reference ?

My findings on the issues is as under :—

*Issue No 1 :—*The representative of the respondent argued on this issue that the workman was working in the respondent concerned and he was absented from duty from 12th July, 1981 as stated by Shri S. K. Talwar, time office incharge as MW-2. The respondent issued a letter Ex. M-4 through registered A. D. The registered receipt is Ex. M-5 which was received back un-delivered. The letter Ex. M-4 is dated 21st August, 1981 to the workman to show cause that why he is absented from duty. The workman as stated by the respondent witness MW-2 came in the factory on 25th August, 1981 on behalf of M/s. Export India to check the goods for the said concerned without any authority letter. So the inspection was dis-allowed so he was asked to produce the authority to check the goods on behalf of the Export India. The workman gave the letter Ex. M-3 on behalf of M/s. Export India which is Ex. M-4 to authorised Shri Mubark to inspect the goods on behalf of M/s. Exports India. He further argued that as stated by Shri Rajbir Singh MW-1 Personal Administrative Advisor of M/s. Export India who was called by the respondent as witness with record as stated in his statement that he knew that the workman present in the court and he has worked in their company. The witness has produced the application form Ex. M-1. Photostat copy of the application form is Exhibit M-2 on which the workman has signed. He has stated in his statement that he has worked in their factory from 7th July, 1981 to 3rd September, 1981. He has brought the attendance register and the wages register in original which was shown in the court. The workman has received the wages from 7th July, 1981 to 3rd September, 1981. The witness has also produced the photostat copy of voucher which was received by the workman which is Ex. M-3 and Ex. M-4. The witness has also admitted the letter issued by them which is Ex. M-5 to authorise the workman to check and inspect the respondent factory on behalf of the Exports India. The witness has further stated in his cross-examination that the workman used to draw Rs. 400/- as salary per month and he was removed from service on 3rd September, 1981 because his work was not satisfactory. He further argued that as stated by Shri MW-2 Shri S. K. Talwar, the workman absented himself from duty from 12th July, 1981 without any permission or sanctioned leave. He has admitted the fact that the worker took the leave from the respondent from 7th July, 1981 to 11th July, 1981 and after that he did not come in the factory and gave no leave application. As previous leave was sanctioned and after his absence from 11th July, 1981 he was issued a letter to resume his duties which was received back un-delivered. He further argued that after the statement of Shri Rajbir Singh of M/s. Export India as MW-1 there is no doubt that the workman absented himself from duty and joined the services with M/s. Export India, New Delhi which was not rebutted by the workman by any way. This shows that the workman left the services of the respondent of his own without any information and permission. So he was removed from services according to Certified Standing Orders of the company which is Ex. M-6 clause 14(e) which is as under :—

“A workman who absents himself without leave for ten consecutive days or more will be deemed to have left the services of the company without notice thereby terminating his employment and in such a case the employment will be automatically terminated but the company shall give a notice informing such termination. If the workman, within four days, thereafter offers an explanation to the satisfaction of the departmental Head, his absence may be converted into such explanation as offered within the time aforementioned, the workman will not be entitled to be excused even though his absence may have been due to illness or some other reason whatsoever.”

So the workman is not entitled to any relief.

The representative of the workman argued on this issue that the workman joined the services of the respondent on 1st April, 1975 as Folder man and continued till 13th August, 1981 as stated by the workman as MW-1. He used to visit the home after one year and he has to go home so he

applied for leave from 12th July, 1981 to 12th August, 1981 which was sanctioned by the respondent and when he returned from leave on 13th August, 1981 and worked for 2 hours after that he was removed from the factory by Shri Kishan Narain that his services are no more required. He was given no termination letter. No charge-sheet or enquiry was held against him and he was terminated illegally without any reason. His termination was illegal and without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 which is illegal termination. He further argued that the workman has produced a photostat copy of leave application filed by him to the respondent which was granted. Though the application was submitted very late in the Court and the respondent objected for the submission but it is a true copy of the leave application so the Court should believe and after granting the leave the plea of the respondent for abandonment of service is wrong and cannot believe and the workman is entitled for his reinstatement with full back wages and continuity of service.

• After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has fully proved their case for abandonment. The workman has never stated in the demand notice that he went on leave from 7th July, 1981 to 11th August, 1981 which he has admitted in his cross examination that he was on leave from 7th July, 1981 to 11th July, 1981. He has also admitted the signature on Ex. M-1 which is an application form of M/s Export India, Delhi. He has also admitted in his cross examination that it is correct that he worked in the export India from 7th July, 1981 to 3rd September, 1981 and used to receive Rs 400 per month as pay. The plea of the respondent that he was not terminated but he abandoned his services of his own cannot be dis-believed in view of the statement as WW-1. So this issue is decided in favour of the respondent and against the workman.

Issue No 2.—After deciding issue No. 1 in favour of the respondent there is no need to discuss this issue at length. When the workman left the services of his own then there is nothing wrong done by the respondent to struck of the name according to Certified Standing Order, and it is not a termination so the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 11th November, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 2432, dated the 17th November, 1982.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6 Lab/11942.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Managing Director, Haryana State Co-op. Supply and Marketing Federation Ltd., Chandigarh; (ii) M/s. Manager Hafed, Rice Mills. Taraori (Karnal).

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 380 of 1981

between

SHRI MOHINDER SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S MANAGING DIRECTOR, HARYANA STATE CO-OP. SUPPLY AND MARKETING FEDERATION LTD., CHANDIGARH (ii) M/S. MANAGER HAFED, RICE MILLS, TARAORI (KARNAL)

Shri Rajashwar Nath, for the workman.

Shri V. K. Shrivastava, for the respondent-management.

AWARD

This reference No. 380 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, — vide his order No. ID/KNL/93/81/60965, dated 21st December, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mohinder Singh, workman and the respondent-management of M/s. Managing Director, Haryana State Coop. Supply and Marketing Federation Ltd., Chandigarh (ii) M/s. Manager, Hafed, Rice Mills, Taraori (Karnal). The term of the reference was :—

Whether the termination of services of Shri Mohinder Singh was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference. The case of the workman according to the demand notice is that the workman was employed as Gateman for the last 2½ years. His date of appointment is 4th December, 1978 and his last wages were Rs. 240/- per month. The respondent terminated his services on 30th April, 1981 arbitrarily without any reason and without following the prescribed procedure of law. The action of the respondent is illegal, arbitrary, mala fide and against the principles of social and natural justice. So he may be reinstated with full back wages and continuity of service.

The case of the respondent according to written statement is that the workman was working as chowkidar at the respondent mills and while working as such he was also to look after the store of Hafed and material therein. On 24th April, 1981 five bags of cement were found short. When the matter had come to the knowledge of the concerned manager he started probing into the matter and ultimately was discussing the possibilities of reporting the matter to the police for theft. The workman over heard all these matter and ran away from the work without informing the authorities concerned. In his absence the management was left with no alternative but to appoint some one in his place. He again appeared on 6th July, 1981 and was offered an alternative job. The workman did not attend the duty at Shahzadpur and reported falsely that he was not allowed. After that the workman was ordered to join his duty at Dhand but the workman did not come to join his duty and the offer is still open. So the respondent has not terminated the services of the workman but the workman left the job of his own accord. In these circumstances the workman is not entitled to any relief and the reference may be rejected.

On the pleadings of the parties, following issues were framed.—

1. Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issues is as under : —

Issue No. 1 : —

The representative of the respondent argued on this issue that the workman was working as chowkidar in the respondent mill. On 24th April, 1981 five bags of cement were found short. When the matter was under investigation the workman run away without informing any body or taking any leave and in his absence the respondent engaged another person. On 6th August, 1981 the workman came to the respondent and the respondent offered him alternative job and directed him to join his duty at Shahzadpur. The workman did not join his duty at Shahzadpur. Then he was asked to join his duty at Dhand but the workman did not resume his duty any of these places, and this offer is still open for him. On 6th August, 1982 Shri V.K. Srivastava, Manager made a statement before this Court that the respondent management is ready to take the workman as watchman with continuity of service but without back wages. On this statement the workman joined his duty on 7th July, 1982. So there is no dispute between the parties and the reference may be rejected.

The representative the workman argued on this issue that the workman was appointed as Gate-man on 4th December, 1978 and drawing Rs. 240/- per month as stated by the workman as WW-1. The respondent terminated his services on 30th April, 1981 without any notice or reason. He further stated that there was no allegation of theft against him. No FIR was lodged against him and no enquiry was conducted by the respondent in this matter. Without going into the fact, whether the workman was guilty or not the termination of services is illegal and against the principles of natural justice. The respondent gave Ex. W-1 on 15th May, 1981 to the workman about his good character. He further argued that the version of the respondent that the workman was offered alternative job is without any foundation on receipt of the letter the workman reported for duty at Shahzadpur but he was not allowed to join. The workman was not asked to join his duty at Dhand which is also wrong. He further argued that on the statement made in the Court on 6th July, 1982 the workman was taken on duty on 7th July, 1982 so there is no dispute about his reinstatement but as the workman was removed illegally his back wages for the period of un-employment may be computed.

After hearing, the arguments of both the parties and going through the file I am of the view that the workman was involved in theft of five bags of cement and when the investigation was being made by the respondent and the matter was being reported to the police the workman run away and did not report his duty. The workman left his job of his own accord to escape from the police. If he was not involved in the theft case he should not left the job without informing the respondent. This shows that the workman was involved in the theft case. Secondly, when the workman again came on 6th July, 1981 he was asked to resume duty on Shahzadpur, which he failed. So I feel that the workman left his job of his own accord. Now the workman was reinstated with continuity of service on 6th August, 1982, so the workman is not entitled to any relief except reinstatement with the continuity of service.

This be read in answer to this reference.

Dated the 16th December, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 2434, dated the 17th November, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab/12168.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of S.D.O., Ujina Mechanical Sub-Division Centre, Palwal, Kothi No. 946, Sector 15, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 104/81

between

SHRI BHAGWAN SAHAI, WORKMAN AND THE MANAGEMENT OF SUB-DIVISIONAL OFFICER, UJINA MECHANICAL SUB-DIVISION CENTRE, PALWAL, KOTHI NO. 946, SECTOR 15, FARIDABAD

Present :—

Shri Bhim Singh, for the workman.

P. C. Masta, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Bhagwan Sahai and the management of Sub-Divisional Officer, Ujina Mechanical Sub-Division Centre, Palwal, Kothi No. 946, Sector 15, Faridabad, by order No. ID/FD/9/81/19022, dated 8th April, 1982, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Bhagwan Sahai was justified and in order ? If not, to what relief is he entitled ?

In this case an *ex parte* award was passed by my order, dated 28th August, 1981 because the management had failed to appear despite service. This award was set aside,—*vide* order passed in Miscellaneous application No. 26, dated 21st December, 1981. Parties then filed their respective pleadings. The following issues were framed by my order, dated 11th June, 1982 :—

- (1) Whether the claimant was a work-charged employee ? If so, to what effect ?
- (2) Whether the termination of services of Shri Bhagwan Sahai was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri Ranjit Singh, S.D.O. and the workman examined himself as his own witness.

Issue No. 1.—

M.W.-1 deposed that the concerned workman was appointed T. Mate on temporary work-charged basis in Ujina Diversion Drain Sub-Division. W.W. 1 deposed that he was employed as T. Mate. He used to receive Rs. 290/- per month as wages. He was not given any appointment letter. He denied the suggestion that he was a work-charged employee.

It was an admitted fact that the workman was appointed in Ujina Diversion Drain Mechanical Sub-Division. He did not receive any appointment letter. He received according to him approximate Rs. 290/- as wages. The workman had mentioned the fact of his appointment in his application Ex M-3 which he submitted to the S.D.O. regarding any alternate job of chowkidar when his service was terminated as T. Mate. This all goes to show that the workman was not a permanent employee.

Issue No. 2.—

M.W.-1 deposed that the work on which the concerned workman was working had been completed. Therefore, his service was terminated. In cross-examination, he replied that the appointment of the workman was made by the Executive Engineer. He was appointed on 3rd July, 1979 as T. Mate. He was removed from service on 1st October, 1979. The work-charged employee was not given any appointment letter. In his sub-division, five workmen were terminated including the concerned workman. He denied the suggestion that five more T. Mate were employed alongwith the concerned workman and they were not terminated alongwith him. He clarified that they were of different categories. He denied the suggestion that junior workman was kept in service. He further replied that the workman served with notice of termination copy of which was Ex. M. 2.

The concerned workman deposed that he was not issued any appointment letter or termination letter. The work was still in progress. In cross-examination, he admitted his signature on Ex. M.-3.

It is an admitted fact that the workman had completed one year of service and no notice or compensation in lieu of notice as provided under section 25-F of the Industrial Disputes Act was given. Section 25-F of the Industrial Disputes Act, 1947 provides as under :—

“Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months ; and

- (c) notice in the prescribed manner is served on the appropriate Government of such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

Secondly the workman was also entitled to retrenchment compensation under above provision. Shorter notice provided in any rule or law was violation of provision of section 25-F which was barred by the section 25-J of the Act, which provided :—

“25-J Effect of laws inconsistent with the chapter.—(1) the provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)] .

Provided that where under the provisions of any other Act or rules orders, or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman

shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under this Act.

- (2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of Industrial Disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

Therefore, I find that the management failed to comply with the provisions of the Industrial Disputes Act, 1947 which was applicable to the workman and the order of termination, thus, was void. As regard the relief, the workman was appointed on a project with stood completed. Therefore he had no place for going back to work on the same place, in the fitness of things; the management will now pay him notice pay and retrenchment compensation under section 25 of the Act and a sum of Rs. 1,000/- as further compensation in lieu of cost of litigation etc. I award accordingly.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated, the 13th November, 1982.

Endst. No. 1195, dated the 24th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lab/12170.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Oswal Steels, Sector 24, Faridabad :—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 279/79

between

THE WORKMEN AND THE MANAGEMENT OF M/S OSWAL STEELS, SECTOR 24,
FARIDABAD

Present:—

Shri H. R. Dua, for the management.
Nemo, for the workmen.

AWARD

The Governor of Haryana referred the following dispute between the management of M/s Oswal Steels, Sector 24, Faridabad and its workmen, by order No. FD/11/177-78/38744, dated 5th September, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the workmen are entitled to the grant of bonus for the year, 1977-78 ? If so, with what details ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my learned predecessor on 7th March, 1980 :—

- (1) Whether the workmen are entitled to the bonus for the year 1977-78 ? If so, with what details ?
- (2) Whether the demands have been properly espoused ?

Issue No. 2 was treated as preliminary issue and after recording the evidence, it was decided in favour of the workmen by my order, dated 10th February, 1982. The workmen were called upon to adduce their evidence on issue No. 1. They were afforded many opportunities for their evidence but they did not adduce rather absented from the proceedings, and the evidence of the workmen was, therefore, closed. Thereafter the management took opportunity for leading its evidence and examined Shri Ashok Kumar Gawari, Finance Controller as M.W. 1. He deposed that he was chartered Accountant and was acquainted with the accounts of the company. The auditors of the company were M/s S. C. Vasudeva & Co. He recognised the signature of the auditors on record. He further deposed that first sale of the company was made in the year 1978. He had brought balance sheet from 1972-73 and subsequent balance sheets were Ex. M. 1 to M. 6. The profit and loss accounts were also attached to balance sheets. There was no allocable surplus for the payment of bonus rather there was cumulative loss during the year. In cross-examination, he deposed that there were two units of the company. One was a Spinning Unit at Ludhiana. The balance sheets were prepared for the two units separately and then consolidated. Board of Directors of the Company was the same. No officer from one unit was transferable to the other because the trade of the unit was different. Taxes were paid on the consolidated basis. Capital was received from the Ludhiana Unit and by receiving loan from I.D.B.I. and I.F.C.I. at the time of raising this unit which was shown in Ex. M. 4. Expenditure details were also available with the management.

In argument learned representative for the workman contended that there were two units of the company and the management had paid bonus at the rate of 20% for this year to the Spinning Mills Workers. The Board of Directors of the management was same. It was further contended that no balance sheet was placed on file. On the other hand, learned representative for the management argued that first sale of the unit was transacted in the year 1973 and the management filed its balance sheet for the year 1972-73. He also submitted that the company was exempted from the payment of bonus for the subsequent five years of the year of sale under the provision of payment of bonus Act. He also stressed that the workman had failed to prove their plea by leading any evidence. The burden was upon the workman to assail the accounts and prove their contention. It was also contended that there was presumption of truth to the balance sheet under section 23 of the Payment of Bonus Act.

I have considered the argument of the parties and find that provision of section 3 of the Payment of Bonus Act, separate balance sheets could be prepared for different units of the same management. Computation of bonus under Act was also made separately on the balance sheet for such units. The provision is as under :—

“Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertakings or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus”.

Under Section 16(1)(b) of the Payment of Bonus Act, the employees were entitled to be paid bonus :—

“from the sixth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, whichever is earlier :

Provided that in the case of any such establishment the employees thereof shall not, save as otherwise provided in section 33, be entitled to be paid bonus under this Act in respect of any accounting year prior to the accounting year commencing on any day in the year 1964”.

Therefore, the year under reference was within statute limit provided under the section. As regard the balance sheet Ex. M. 6, loss for the year was shown Rs. 36,61,164. There was loss in the other years and previous year too. Therefore, I find that the workmen were not entitled to any bonus for the year. I award accordingly.

Dated the 22nd November, 1982.

M. C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1197, dated the 24th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)-82-6 Lab/12171.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Jai Hind Investment of Industries Pvt. Ltd., Sector-24, Faridabad:—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 161/1981

between

SHRI K. L. MATTA, WORKMAN AND THE MANAGEMENT OF M/S JAI HIND INVESTMENT OF INDUSTRIES PVT. LTD., SECTOR-24, FARIDABAD

Present:—

Shri S. D. Mishra, for the management.

None, for the workman.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri K. L. Matta and the management of M/s Jai Hind Investment of Industries Pvt. Ltd., Sector-24, Faridabad, by order No. ID/FD/59/81/28028, dated 4th June, 1981, to this Tribunal for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri K. L. Matta, was justified and in order? If so, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties the issue under reference was put under trial by my order, dated 3rd September, 1981 and on the request of the parties, another issue "whether the enquiry is fair and proper" was framed on 9th June, 1982. The management examined Shri S. N. Gaur Labour-cum-Security Officer as MW-1 who deposed that he knew the concerned workman. He was appointed enquiry officer,—vide Ex. M-1. He held enquiry proceeding. He provided facilities to the workman, asked for during the enquiry. Proceeding of enquiry was Ex. M-2. He conducted the enquiry on the principle of natural justice. The workman was afforded full opportunities to defend him. He had cross examined the management's witnesses and given opportunity to lead his defence. Finding of enquiry was Ex. M-3. All the documents produced during the enquiry were enlisted in Ex. M-4 and placed in the enquiry file. After the examination-in-chief, the case was adjourned for cross examination because the visibility was poor there being no power. On the adjourned date, the workman failed to appear and the case was further adjourned for evidence of the management. On the adjourned date also the workman did not appear and the management examined Shri G. U. Rao, Chief Engineer-cum-Factory Manager as MW-2. He deposed that the workman was appointed,—vide Ex. M-5. He was issued chargesheet by the then Factory Manager Shri S. M. Agrawal. Shri Agrawal had left the service of the management. The workman had submitted explanation Ex. M-7 and domestic enquiry was constituted,—vide Ex. M-1. Finding of enquiry Ex. M-3 was received by him. He alongwith Shri S. M. Agrawal or Managing Director came to the conclusion that the workman was rightly found guilty in the enquiry. Charges were grave and serious. Therefore it was decided to dismiss the workman under provision of certified standing orders Ex. M-8 of the company. Dismissal letter Ex. M-9 was sent by registered post which was delivered to the workman. Before terminating the service, the past record of the workman was also considered.

After the conclusion of the evidence by the management the case was further adjourned to for argument. The workman did not appear, therefore, the ex parte argument were heard.

The learned representative for the management pointed out to the charge-sheet, domestic enquiry and evidence recorded in the enquiry and findings. He also referred the various documents placed by the management during the enquiry proceeding. It was contended that the workman was afforded full opportunity to cross examine the management's witnesses and lead his defence.

Believing the evidence on record and considering the argument of the learned representative, I hold both issues in favour of the management. I pass my award that the workman was not entitled to any relief.

M. C. BHARDWAJ,

Dated, the 13th November, 1982.

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 1198, dated 24th November, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)82-6Lab./12172.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Goodyear India Ltd., Ballabgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 195/1977

between

SHRI BIR SINGH WORKMAN AND THE MANAGEMENT OF M/S GOODYEAR INDIA
LIMITED, BALLABGARH.

Present:—

Shri Bir Singh, workman in person along with.

Shri V.K. Sachhar,

Shri Jagat Arora, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Bir Singh and the management of M/s Goodyear India Limited Ballabgarh by order No. ID/FD/74/46946, dated 27th October, 1977, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947:—

Whether the termination of Shri Bir Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my learned predecessor on 30th November, 1978:—

(1) Whether there is relationship of Master and Servant between the parties?

(2) Whether the award in reference No. 42 of 1968 has this reference?

- (3) Whether the order under Section 33-C (2) of the I. D. Act of the Labour Court bars the said reference,
- (4) Whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?
- (5) Whether the Government had rejected the reference previously? If so, to what effect
- (6) Relief.

And the case was fixed for the evidence of the workman who examined himself as WW-2 Shri V. K. Sachhar as WW-1, Shri M. Hasan as WW-3 and Shri H. R. Juneja, Purchase Officer as WW-4. Then the case was fixed for evidence of the management. Parties reached a settlement by which Shri Bir Singh the concerned workman agreed to receive a sum of Rs. 10,000 in lieu of his claim including reinstatement, bonus, gratuity and Provident Fund. This amount was paid,—vide cheque No- PVN-246124, dated 8th November, 1982 drawn on Punjab National Bank extension counter Goodyear India Limited, Ballabgarh. Stamped receipt was issued by the concerned workman on receipt of cheque. It was agreed by the parties that this settlement will not be referred in all the pending cases or writ matter against Goodyear India Limited.

In view of the above settlement, I pass my award that the parties had settled their dispute. There was no cause for further adjudication in the matter. Therefore, settlement award is passed.

Dated the 22nd November, 1982.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1199, dated 24th November, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lab/12196.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of the Executive Engineer, Dadupur Division, Western Jamuna Canal, Dadupur (Jagadhri) :—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 211/1981

between

LAKHMIRA RAM, WORKMAN AND THE MANAGEMENT OF THE EXECUTIVE ENGINEER,
DADUPUR DIVISION, WESTERN JAMUNA CANAL, DADUPUR (JAGADHRI)

Present :—

Shri Balbir Singh. for the workman.

Shri K.L. Suneja. for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Lakhmira Ram and the management of the Executive Engineer, Dadupur Division, Western Jamuna Canal,

Dadupur (Jagadhri), by order No. ID/YMN/52/81/32141, dated 3rd July, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Lakhmira Ram was justified and in order? If so, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 27th April, 1982:—

- (1) Whether the reference is bad for non joinder of necessary party?
- (2) Whether the Irrigation Department is not an industry as defined in the I.D. Act?
- (3) Whether the termination of services of Shri Lakhmira Ram was justified and in order? If so, to what relief is he entitled?

And the case was fixed for the evidence of the management who examined Shri S.N. Sharma, S.D.O. as MW-1 and the workman examined himself as his own witness. Arguments were heard.

Issue No. 1 :

MW-1 deposed that head of the department was Chief Engineer. He was asked by the Executive Engineer, Dadupur to terminate the service of the workman. He was a work-charged employee. In cross-examination, he replied that the workman was appointed by the Executive Engineer on 17th March, 1979. The Executive Engineer had ordered me to terminate the service of the workman on which letter Ex. M-2 was issued.

The learned representative for the management argued that under clause 2(g)(i) it was the Chief Engineer who was employer for the State Department. He also pointed out that no authority was prescribed under Section 2(M) by the rules framed under this Act. On the other hand, the learned representative for the workman contended that the workman was appointed on verbal order of the Executive Engineer and termination was also ordered by him. Therefore, the Executive Engineer was the proper authority.

I have considered the matter and find that the appointing and terminating authority was the Executive Engineer as admitted by MW-1 the concerned S.D.O. I do not find any lacking in implicating Executive Engineer as the employer because he was admitted to be appointing authority for work-charged employees. It may be correct that for the permanent employees of the department the Chief Engineer may be employer.

Issue No. 2 :

MW-1 deposed that the Irrigation Department was engaged in the construction of canals and dams. Such work was not done by any private party. In argument, the learned representative for the management contended that the activities of the Irrigation Department were construction and maintenance of canals which was sovereign function of the State. He cited 1978-1-LLJ-page 349.

I find that at page 405 of the report under heading dominant nature test in clause C, their Lordships while explaining the term industry about sovereign functions Rule C :—

“Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).”

I find mentioned in sub-section (n) of Section-2 of the Industrial Disputes Act, 1947, the definition of public utility service—“(iv) any industry which supplied power, light or water to the public.” In laying down the principles sovereign the term industry their lordships held that :—

“(a) Where (i) systematic activity (ii) organised by co-operation between employer and employee (the Direct and substantial element is commercial); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes nor spiritual or religious but inclusive of material things or services geared to celestial-abliss i.e. making on a large scale of (prasad of food) *prima facie*, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector—

- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking."

Therefore, I find that authority engaged in the supply of water to the public for human need was covered by definition of industry because the same was specifically mentioned in the Industrial Disputes Act, 1947. Therefore, the management fell within the term industry. The issue is decided accordingly.

Issue No 3.

MW-1 deposed that the workman was appointed as work-charged employee against the annual maintenance repair estimate of old canal rest house. This rest house was converted into residence. The Chief Engineer has ordered that the old rest house staff be terminated. The workman was issued 10 days notice under P.W.D. code which contained the provisions of recruitment and termination of the work-charged employee. The termination letter of the workman was Ex. M-1. Termination notice was Ex. M-2 and order of Chief Engineer was Ex. M-3. Order of conversion of Old Rest House into residence was Ex. M-4. In cross-examination, he replied that the workman had worked from 17th March, 1979 to 27th June, 1981. He further admitted that no retrenchment compensation was paid to the workman at the time of termination. The concerned workman deposed that he served management from 1979 to 1981. He was not paid any compensation. He was a work-charged employee. Some work charged employees junior to him were still in the service in Sub-Division. In cross-examination, he admitted that the old rest house on which he worked was converted into residence of the Superintending Engineer. Two junior sweepers were still working in other rest houses.

In argument, the learned representative for the management argued that the service of the workman were terminated under 1.43 of the P.W.D. Code. He pointed out that there was clause of 12 days notice before termination of service of such employee in the Code. On the other hand, the learned representative for the workman cited 1980-II-LLJ-page 72 and argued that termination of service amounted to retrenchment as given in Section 2(00) of the Industrial Disputes Act.

I have given a thoughtful consideration to the matter and find that the workman had completed one year service. The termination of service amounted to retrenchment as held by their Lordship of the Supreme Court in Santosh Gupta V/s State Bank of Patiala (Supra). As regard contention only 10 days notice under P.W.D. Code was required, this contention has also no force because under Industrial Disputes Act Section 25-F, one month notice was mandatory under sub-clause (a). Section-25-F (a) provides :—

"the workman has been given one month's notice indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;"

Farther more by virtue of Section 25-J of the Industrial Disputes Act, Chapter 5-A of the Act would have over-riding effect over any inconsistent provision in any other law and therefore, the compliance of Section 25-F was mandatory while retrenching the employee having more than one year service. P.W.D. Rules cannot over ride the provision of the Industrial Disputes Act. Hence notice of termination contravened the above said law. In these circumstances, the termination of the workman was not in order. Coming to the relief, I find that the workman was employed against an estimate and was work-charged employee. The management should find out if some junior sweeper was still working in some rest house. If the contention of the workman that some junior was still in service, was found correct, the concerned employee has right to get employment in the department. It will be in the fitness of thing if the workman is paid one month notice pay, retrenchment compensation under Section 25-F and sum of Rs. 1,000 as compensation as litigation cost etc. I award accordingly.

M. C. BHARDWAJ,
Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 1196, dated the 24th November, 1982

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.